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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,092	07/07/2003	Shogo Ishii	TE012	5086
21254	7590	03/20/2006	EXAMINER	
MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817			TRUONG, LOAN	
		ART UNIT	PAPER NUMBER	
		2114		
DATE MAILED: 03/20/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/613,092	ISHII ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	LOAN TRUONG	2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 July 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claim 11 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In regards to claim 11, applicants claim a program, which does not fall within the statutory category for patentably and therefore is non-statutory. See MPEP § 2106. Examiner suggests that the program be embodied in a computer readable medium being executed by the server.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Richard (Pub. No.: US 2001/0056425).

In regard to claim 1, Richard disclosed a backup system for backing up a hard disk of a computer which is connected to a server via a network, characterized in that said server comprises:

a boot OS creation section adapted to create a boot OS for said computer (*Server burns CDROMs with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);

a backup section adapted to store as a file the content of the hard disk in said computer into a designated backup destination (*server receives backup service request for restore CDROM, fig. 4, 31, paragraph 0069-0070*);

a management information database adapted to store therein management information of said computer (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*); and

a kernel image adapted to serve for the creation of said boot OS (*ISO image, fig. 4, 37, paragraph 0068-0070*).

In regard to claim 2, Richard disclosed the backup system as claimed in claim 1, wherein said server further comprising a restore section is adapted to restore the content of said hard disk into the same hard disk in said computer or into a hard disk of another computer by using the file which has been stored as a file by said backup section (*execute POST (power-on-self-test) and start booting on CDROM, fig. 5, 41, 43, paragraph 0078-0081*).

In regard to claim 3, Richard disclosed a backup system for backing up a hard disk of a computer, which is connected to a server via a network, characterized in that said server, comprises:

- i) a boot OS creation section adapted to create a boot OS for said computer and to store it into a boot media (*Server burns CDROMs with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);
- ii) a management information database adapted to store therein management information of said computer (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*); and
- iii) a kernel image adapted to serve for the creation of said boot OS, and further characterized in that said boot media (*dos kernel in the bootable partition of the backup CDROM, fig. 4, 32, paragraph 0070*) comprises:
- iv) a backup section adapted to store as a file the content of the hard disk in said computer into a designated backup destination (*data set table, fig. 4, 34, paragraph 0072*); and
- v) a restore section adapted to restore the content of said hard disk into the same hard disk in said computer or into a hard disk of another computer by using the file which has been stored as a file by said backup section (*booting partition of the CDROM by POST (power-on-self-test) operation, fig. 5, 41, 43, paragraph 0079-0081*).

In regard to claim 4, Richard disclosed the backup system as claimed in claims 1, wherein said boot OS creation section includes:

a parameter creating portion adapted to allow said kernel image to serve as said boot OS (*booting partition is arranged to contain a set of file systems, paragraph 0070*); and  
a writing portion adapted to store said boot OS (*CDROM which has a booting partition, paragraph 0067*).

In regard to claim 5, Richard disclosed the backup system as claimed in claims 1, wherein said backup section includes:

an information managing portion adapted to manage information for backup (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*);  
a reading portion adapted to read the content of the hard disk in said computer while compressing it (*backup agent compressed data to be transmitted through the network, paragraph 0064*); and  
a writing portion adapted to write said compressed content into said designated backup destination (*server receives compressed data sent from the backup agent, paragraph 0064*).

In regard to claim 6, Richard disclosed the backup system as claimed in claims 1, wherein said restore section includes:

an information managing portion adapted to manage information for restore (*BIOS prompt the user to choose where to boot and permits the booting process to proceed, paragraph 0080-0081*);  
a reading portion adapted to read a file of a restore origin while expanding it (*extract OS id and reestablish setting, fig. 5, 51, paragraph 0088*); and

a writing portion adapted to write this expanded content into a hard disk as a restore destination (*rebuild.exe will manipulate FAT directory and file system objects, paragraph 0091*).

In regard to claim 7, Richard disclosed the backup system as claimed in claims 1, wherein said backup section includes a padding portion adapted to pad an unassigned region in the hard disk in said computer with specific values (*backup agent performs an analysis of backup objects and establishes a lists of those representative of configuration, paragraph 0053*).

It is inherent that unassigned regions or non-representative of configuration regions are not transmitted to the backup server, therefore it would have a specific value of null or zero.

In regard to claim 8, Richard disclosed the backup system as claimed in claims 5, wherein said information managing portion included in said backup section is adapted to store certification data, and wherein said restore section includes a certifying portion adapted to perform certification using said stored certification data by said information managing portion included in said restore section (*prompts the user to enter the id and password, paragraph 0084-0086*).

In regard to claim 9, Richard disclosed a method of backing up a hard disk connected to a computer, characterized by comprising the steps of:

creating a boot OS for booting said computer by using an external storage device or via a network, independently of an OS installed in said computer as a backed-up object (*Server burns CDROMs with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);

booting said computer with said boot OS (*user selects CDROM to boot from the booting partition, fig. 5, 43, paragraph 0081*); and

backing up the content of the hard disk connected to said computer into a server via said network (*backup agent transmits each backup object to the server, fig. 2, 16, paragraph 0054*), into a storage medium over said network (*backup database, fig. 1, 4, paragraph 0048*), or into a storage medium directly connected to said computer (*CDROM, paragraph 0081*).

In regard to claim 10, Richard disclosed the method as claimed in claim 9, further comprising the step of restoring said content of the hard disk connected to said computer into a hard disk connected to another computer by using a file backing up the content of the hard disk in said computer (*config.sys cause execution of rebuild.exe which re-establishes a set of parameters for ensuring a correct starting of the operating system at the next boot of the machine, fig. 5, 45, 51, paragraph 0083 and 0088*).

In regard to claim 11, Richard disclosed a program run in a server or a computer via a network, characterized by comprising:

a creating function adapted to create a boot OS for said computer (*Server burns CDROMs with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);  
a backup function adapted to store as a file the content of a hard disk in said computer into a designated backup destination (*server receives backup service request for restore CDROM, fig. 4, 31, paragraph 0069-0070*); and

a restore function adapted to restore the content of said hard disk into the same hard disk in said computer by using the file which has been stored as a file by said backup function (*execute POST (power-on-self-test) and start booting on CDROM, fig. 5, 41, 43, paragraph 0078-0081*).

In regard to claim 12, Richard disclosed a backup service provision system for providing a backup of a hard disk of a computer connected to a server via the Internet (*the web, fig. 1, 1*), characterized in that said server comprises:

a boot OS creating section adapted to create a boot OS for said computer (*Server burns CDROMs with bootable partition and ISO image, fig. 4, 37, paragraph 0068-0070*);

a backup section adapted to store as a file the content of the hard disk in said computer into a designated backup destination (*server receives backup service request for restore CDROM, fig. 4, 31, paragraph 0069-0070*);

a management information database adapted to store management information for said computer (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*); and

a kernel image adapted to serve for the creation of said boot OS (*ISO image, fig. 4, 37, paragraph 0068-0070*), and wherein said backup service provision system is configured to back up any computers connectable to said server (*backup and restore process are adapted to a corporate environment, fig. 1, paragraph 0027*).

In regard to claim 13, Richard disclosed the backup service provision system as claimed in claim 12, wherein said server further comprises a restore section adapted to restore the content of said hard disk into the same hard disk in said computer by using the file which has been stored as a file by said backup section (*execute POST (power-on-self-test) and start booting on CDROM, fig. 5, 41, 43, paragraph 0078-0081*).

In regard to claim 14, Richard disclosed the backup system as claimed in claim 2, wherein said boot OS creation section includes:

A parameter creating portion adapted to allow said kernel image to serve as said boot OS (*booting partition is arranged to contain a set of file systems, paragraph 0070*); and  
A writing portion adapted to store said boot OS (*CDROM which has a booting partition, paragraph 0067*).

In regard to claim 15, Richard disclosed the backup system as claimed in claim 3, wherein said boot OS creation section includes:

A parameter creating portion adapted to allow said kernel image to serve as said boot OS (*booting partition is arranged to contain a set of file systems, paragraph 0070*); and  
A writing portion adapted to store said boot OS (*CDROM which has a booting partition, paragraph 0067*).

In regard to claim 16, Richard disclosed the backup system as claimed in claim 2, wherein said backup section includes;

An information managing portion adapted to manage information for backup (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*);

A reading portion adapted to read the content of the hard disk in said computer while compressing it (*backup agent compressed data to be transmitted through the network, paragraph 0064*); and

A writing portion adapted to write said compressed content into said designated backup destination (*server receives compressed data sent from the backup agent, paragraph 0064*).

In regard to claim 17, Richard disclosed the backup system as claimed in claim 3, wherein said backup section includes;

An information managing portion adapted to manage information for backup (*backup process stored objects received by server within a database, fig. 1, 4, paragraph 0048*);

A reading portion adapted to read the content of the hard disk in said computer while compressing it (*backup agent compressed data to be transmitted through the network, paragraph 0064*); and

A writing portion adapted to write said compressed content into said designated backup destination (*server receives compressed data sent from the backup agent, paragraph 0064*).

In regard to claim 18, Richard disclosed the backup system as claimed in claim 2, wherein said restore section includes:

An information managing portion adapted to manage information for restore (*BIOS prompt the user to choose where to boot and permits the booting process to proceed, paragraph 0080-0081*);

A reading portion adapted to read a file of a restore origin while expanding it (*extract OS id and reestablish setting, fig. 5, 51, paragraph 0088*); and

A writing portion adapted to write this expanded content into a hard disk as a restore destination (*rebuild.exe will manipulate FAT directory and file system objects, paragraph 0091*).

In regard to claim 19, Richard disclosed the backup system as claimed in claim 2, wherein said backup section includes a padding portion adapted to pad an unassigned region in the hard disk in said computer with specific values (*backup agent performs an analysis of backup objects and establishes a lists of those representative of configuration, paragraph 0053*).

It is inherent that unassigned regions or non-representative of configuration regions are not transmitted to the backup server, therefore it would have a specific value of null or zero.

In regard to claim 20, Richard disclosed the backup system as claimed in claim 6, wherein said information managing portion included in said backup section is adapted to store certification data, and wherein said restore section includes a certifying portion adapted to perform certification using said stored certification data by said information managing portion included in said restore section (*prompts the user to enter the id and password, paragraph 0084-0086*).

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Loan Truong whose telephone number is (571) 272-2572. The examiner can normally be reached on M-F from 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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